

(l) For CAP, producers are either eligible or ineligible. Therefore, the provisions of § 718.304 of this chapter, "Failure to Fully Comply," do not apply to this subpart.

(m) The regulations in subpart B apply to CAP. In addition to those regulations that specifically include subpart H or apply to this part, the following sections specifically apply to this subpart: §§ 760.113(a), 760.114, and 760.116(a).

Subpart I—2005–2007 Crop Disaster Program

SOURCE: 72 FR 72867, Dec. 21, 2007, unless otherwise noted.

§ 760.800 Applicability.

This part sets forth the terms and conditions for the 2005–2007 Crop Disaster Program (2005–2007 CDP). CDP makes emergency financial assistance available to producers who have incurred crop losses in quantity or quality for eligible 2005, 2006, or 2007 crop years due to disasters as determined by the Secretary under provisions of Title IX of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Pub. L. 110–28). However, to be eligible for assistance, the crop subject to the loss must have been planted or existed before February 28, 2007, or, in the case of prevented planting, would have been planted before February 28, 2007.

§ 760.801 Administration.

(a) The program will be administered under the general supervision of the Deputy Administrator for Farm Programs and will be carried out in the field by FSA State and county committees.

(b) State and county committees and representatives do not have the authority to modify or waive any of the provisions of this part.

(c) The State committee will take any action required by this part that has not been taken by a county committee. The State committee will also:

(1) Correct, or require a county committee to correct, any action taken by that FSA county committee that is not in accordance with this part; and

(2) Require a county committee to withhold taking or reverse any action that is not in accordance with this part.

(d) No provision or delegation to a State or county committee will prevent the Deputy Administrator for Farm Programs from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator for Farm Programs may authorize State and county committees to waive or modify non-statutory deadlines or other program requirements in cases where lateness or failure to meet such does not adversely affect the operation of the program.

§ 760.802 Definitions.

The following definitions apply to this part. The definitions in parts 718 and 1400 of this title also apply, except where they conflict with the definitions in this section.

Actual production means the total quantity of the crop appraised, harvested, or assigned, as determined by the FSA State or county committee in accordance with instructions issued by the Deputy Administrator for Farm Programs.

Administrative fee means an amount the producer must pay for Noninsured Crop Disaster Assistance Program (NAP) enrollment for non-insurable crops.

Affected production means, with respect to quality losses, the harvested production of an eligible crop that has a documented quality reduction of 25 percent or more on the verifiable production record.

Appraised production means production determined by FSA, or a company reinsured by the Federal Crop Insurance Corporation (FCIC), that was unharvested but was determined to reflect the crop's yield potential at the time of appraisal.

Approved yield means the amount of production per acre, computed in accordance with FCIC's Actual Production History (APH) Program at part 400, subpart G of this title or, for crops not included under part 400, subpart G

of this title, the yield used to determine the guarantee. For crops covered under NAP, the approved yield is established according to part 1437 of this title. Only the approved yields based on production evidence submitted to FSA prior to May 25, 2007 will be used for purposes of the 2005–2007 CDP.

Aquaculture means a value loss crop for the reproduction and rearing of aquatic species in controlled or selected environments including, but not limited to, ocean ranching, except private ocean ranching of Pacific salmon for profit in those States where such ranching is prohibited by law.

Aquaculture facility means any land or structure including, but not limited to, a laboratory, concrete pond, hatchery, rearing pond, raceway, pen, incubator, or other equipment used in aquaculture.

Aquaculture species means any aquaculture species as defined in part 1437 of this title.

Average market price means the price or dollar equivalent on an appropriate basis for an eligible crop established by FSA, or CCC, or RMA, as applicable, for determining payment amounts. Such price will be based on historical data of the harvest basis excluding transportation, storage, processing, packing, marketing, or other post-harvesting expenses. Average market prices are generally applicable to all similarly situated participants and are not established in response to individual participants. Accordingly, the established average market prices are not appealable under parts 11 or 780 of this title.

Catastrophic risk protection means the minimum level of coverage offered by FCIC.

CCC means the Commodity Credit Corporation.

Controlled environment means, with respect to those crops for which a controlled environment is expected to be provided, including but not limited to ornamental nursery, aquaculture (including ornamental fish), and floriculture, an environment in which everything that can practicably be controlled with structures, facilities, growing media (including, but not limited to, water, soil, or nutrients) by the

producer, is in fact controlled by the producer.

Crop insurance means an insurance policy reinsured by FCIC under the provisions of the Federal Crop Insurance Act, as amended.

Crop year means:

(1) For insured crops, the crop year as defined according to the applicable crop insurance policy;

(2) For NAP covered crops, as provided in part 1437 of this title.

Damaging weather means drought, excessive moisture, hail, freeze, tornado, hurricane, typhoon, excessive wind, excessive heat, weather-related saltwater intrusion, weather-related irrigation water rationing, and earthquake and volcanic eruptions, or any combination. It also includes a related condition that occurs as a result of the damaging weather and exacerbates the condition of the crop, such as crop disease, and insect infestation.

Deputy Administrator means the Deputy Administrator for Farm Programs, Farm Service Agency, U.S. Department of Agriculture or designee.

Eligible crop means a crop insured by FCIC as defined in part 400 of this title, or included under NAP as defined under part 1437 of this title for which insurance or NAP coverage was obtained timely for the year which CDP benefits are sought.

End use means the purpose for which the harvested crop is used, such as grain, hay, or seed.

Expected production means, for an agricultural unit, the historic yield multiplied by the number of planted or prevented acres of the crop for the unit.

FCIC means the Federal Crop Insurance Corporation, a wholly owned Government Corporation within USDA.

Final planting date means the latest date, established by the Risk Management Agency (RMA) for insured crops, by which the crop must initially be planted in order to be insured for the full production guarantee or amount of insurance per acre. For NAP covered crops, the final planting date is as provided in part 1437 of this title.

Flood prevention means:

(1) For aquaculture species, placing the aquaculture facility in an area not prone to flood;

(2) In the case of raceways, devices or structures designed for the control of water level; and

(3) With respect to nursery crops, placing containerized stock in a raised area above expected flood level and providing draining facilities, such as drainage ditches or tile, gravel, cinder, or sand base.

Good nursery growing practices means utilizing flood prevention, growing media, fertilization to obtain expected production results, irrigation, insect and disease control, weed, rodent and wildlife control, and over winterization storage facilities.

Ground water means aqueous supply existing in an aquifer subsurface that is brought to the surface and made available for irrigation by mechanical means such as by pumps and irrigation wells.

Growing media means:

(1) For aquaculture species, media that provides nutrients necessary for the production of the aquaculture species and protects the aquaculture species from harmful species or chemicals or

(2) For nursery crops, a well-drained media with a minimum 20 percent air pore space and pH adjustment for the type of plant produced designed to prevent "root rot."

Harvested means:

(1) For insured crops, harvested as defined according to the applicable crop insurance policy;

(2) For NAP covered single harvest crops, that a crop has been removed from the field, either by hand or mechanically, or by grazing of livestock;

(3) For NAP covered crops with potential multiple harvests in 1 year or harvested over multiple years, that the producer has, by hand or mechanically, removed at least one mature crop from the field during the crop year;

(4) For mechanically-harvested NAP covered crops, that the crop has been removed from the field and placed in a truck or other conveyance, except hay is considered harvested when in the bale, whether removed from the field or not. Grazed land will not be considered harvested for the purpose of determining an unharvested or prevented planting payment factor. A crop that is intended for mechanical harvest, but

subsequently grazed and not mechanically harvested, will have an unharvested factor applied.

Historic yield means, for a unit, the higher of the county average yield or the participant's approved yield.

(1) An insured participant's yield will be the higher of the county average yield listed or the approved federal crop insurance APH, for the disaster year.

(2) NAP participant's yield will be the higher of the county average or approved NAP APH for the disaster year.

Insurable crop means an agricultural crop (excluding livestock) for which the producer on a farm is eligible to obtain a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501-1524).

Marketing contract means a legally binding written contract between a purchaser and grower for the purpose of marketing a crop.

Market value means:

(1) The price(s) designated in the marketing contract; or

(2) If not designated in a marketing contract, the rate established for quantity payments under § 760.811.

Maximum average loss level means the maximum average level of crop loss to be attributed to a participant without acceptable production records (verifiable or reliable). Loss levels are expressed in either a percent of loss or yield per acre, and are intended to reflect the amount of production that a participant would have been expected to make if not for the eligible disaster conditions in the area or county, as determined by the county committee in accordance with instructions issued by the Deputy Administrator.

Multi-use crop means a crop intended for more than one end use during the calendar year such as grass harvested for seed, hay, and grazing.

Multiple cropping means the planting of two or more different crops on the same acreage for harvest within the same crop year.

Multiple planting means the planting for harvest of the same crop in more than one planting period in a crop year on different acreage.

NASS means the National Agricultural Statistics Service.

Net crop insurance indemnity means the indemnity minus the producer paid premium.

NAP covered means a crop for which the participants obtained assistance under section 196 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7333).

Normal mortality means the percentage of dead aquaculture species that would normally occur during the crop year.

Person means person as defined in part 1400 of this title, and all rules with respect to the determination of a person found in that part are applicable to this part. However, the determinations made in this part in accordance with part 1400, subpart B, Person Determinations, of this title will also take into account any affiliation with any entity in which an individual or entity has an interest, regardless of whether or not such entities are considered to be actively engaged in farming.

Planted acreage means land in which seed, plants, or trees have been placed, appropriate for the crop and planting method, at a correct depth, into a seed-bed that has been properly prepared for the planting method and production practice normal to the USDA plant hardiness zone as determined by the county committee.

Prevented planting means the inability to plant an eligible crop with proper equipment during the planting period as a result of an eligible cause of loss, as determined by FSA.

Production means quantity of the crop or commodity produced expressed in a specific unit of measure including, but not limited to, bushels or pounds.

Rate means price per unit of the crop or commodity.

Recording county means, for a producer with farming interests in only one county, the FSA county office in which the producer's farm is administratively located or, for a producer with farming interests that are administratively located in more than one county, the FSA county office designated by FSA to control the payments received by the producer.

Related condition means, with respect to a disaster, a condition that causes deterioration of a crop, such as insect infestation, plant disease, or aflatoxin,

that is accelerated or exacerbated as a result of damaging weather, as determined in accordance with instructions issued by the Deputy Administrator.

Reliable production records means evidence provided by the participant that is used to substantiate the amount of production reported when verifiable records are not available, including copies of receipts, ledgers of income, income statements of deposit slips, register tapes, invoices for custom harvesting, and records to verify production costs, contemporaneous measurements, truck scale tickets, and contemporaneous diaries that are determined acceptable by the county committee.

Repeat crop means, with respect to production, a commodity that is planted or prevented from being planted in more than one planting period on the same acreage in the same crop year.

RMA means the Risk Management Agency.

Salvage value means the dollar amount or equivalent for the quantity of the commodity that cannot be marketed or sold in any recognized market for the crop.

Secondary use means the harvesting of a crop for a use other than the intended use.

Secondary use value means the value determined by multiplying the quantity of secondary use times the FSA or CCC-established price for that use.

State committee means the FSA State committee.

Surface irrigation water means aqueous supply anticipated for irrigation of agricultural crops absent an eligible disaster condition impacting either the aquifer or watershed. Surface irrigation water may result from feral sources or from irrigation districts.

Tropical crops has the meaning assigned in part 1437 of this title.

Tropical region has the meaning assigned in part 1437 of this title.

Unharvested factor means a percentage established for a crop and applied in a payment formula to reduce the payment for reduced expenses incurred because commercial harvest was not performed. Unharvested factors are generally applicable to all similarly

situated participants and are not established in response to individual participants. Accordingly established unharvested factors are not appealable under parts 11 and 780 of this title.

Unit means, unless otherwise determined by the Deputy Administrator, basic unit as defined in part 457 of this title that, for ornamental nursery production, includes all eligible plant species and sizes.

Unit of measure means:

(1) For all insured crops, the FCIC-established unit of measure;

(2) For all NAP covered crops, the established unit of measure, if available, used for the 2005, 2006, or 2007 NAP price and yield;

(3) For aquaculture species, a standard unit of measure such as gallons, pounds, inches, or pieces, established by the State committee for all aquaculture species or varieties;

(4) For turfgrass sod, a square yard;

(5) For maple sap, a gallon;

(6) For honey, pounds; and

(7) For all other crops, the smallest unit of measure that lends itself to the greatest level of accuracy with minimal use of fractions, as determined by the State committee.

United States means all 50 States of the United States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, and to the extent the Deputy Administrator determines it to be feasible and appropriate, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the former Trust Territory of the Pacific Islands, which include Palau, Federated States of Micronesia, and the Marshall Islands.

USDA means the United States Department of Agriculture.

USDA Plant Hardiness Zone means 11 regions or planting zones as defined by a 10 degree Fahrenheit difference in the average annual minimum temperature.

Value loss crop has the meaning assigned in part 1437 of this title.

Verifiable production record means:

(1) For quantity losses, evidence that is used to substantiate the amount of production reported and that can be verified by FSA through an independent source; or

(2) For quality losses, evidence that is used to substantiate the amount of

production reported and that can be verified by FSA through an independent source including determined quality factors and the specific quantity covered by those factors.

Yield means unit of production, measured in bushels, pounds, or other unit of measure, per area of consideration, usually measured in acres.

§ 760.803 Eligibility.

(a) Participants will be eligible to receive disaster benefits under this part only if they incurred qualifying quantity or quality losses for the 2005, 2006, or 2007 crops, as further specified in this part, as a result of damaging weather or any related condition. Participants may not receive benefits with respect to volunteer stands of crops.

(b) Payments may be made for losses suffered by an eligible participant who, at the time of application, is a deceased individual or is a dissolved entity if a representative, who currently has authority to enter into a contract for the participant, signs the 2005, 2006, or 2007 Crop Disaster Program application. Participants must provide proof of the authority to sign legal documents for the deceased individual or dissolved entity. If a participant is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly authorized representatives must sign the application for payment.

(c) As a condition to receive benefits under this part, the Participant must have been in compliance with the Highly Erodible Land Conservation and Wetland Conservation provisions of part 12 of this title for the 2005, 2006, or 2007 crop year, as applicable, and must not otherwise be precluded from receiving benefits under parts 12 or 1400 of this title or any law.

§ 760.804 Time and method of application.

(a) The 2005, 2006, 2007 Crop Disaster Program application must be submitted on a completed FSA-840, or such other form designated for such application purpose by FSA, in the FSA county office in the participant's control county office before the close of